5

COMMITTEE ON SUBORDINATE LEGISLATION
(2014-2015)

(SIXTEENTH LOK SABHA)

FIFTH REPORT

(PRESENTED TO LOK SABHA ON 07.05.2015)

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LOK SABHA SECRETARIAT

NEW DELHI

May, 2015 / Vaisakha, 1937 (Saka)

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COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION (16th LOK SABHA)

(2014-2015)

1. Shri Dilipkumar Mansukhlal Gandhi — Chairperson

Members

2. Shri Idris Ali
3. Shri C. R. Chaudhary
4. Shri P. P.Chaudhary
5. Shri Shyama Charan Gupta
6. Shri Jhina Hikaka
7. Shri S. P. Muddahanumegowda
8. Shri V. Panneerselvam
9. Shri Prem Das Rai
10. Shri Chandu Lal Sahu
11. Shri Ram Prasad Sarmah
12. Adv. Narendra Keshav Sawaikar
13. Shri Ram Kumar Sharma
14. Shri Nandi Yellaiah
15. Shri Birendra Kumar Chaudhary

SECRETARIAT

1.	Shri Shiv Singh	-	Joint Secretary
2.	Shri Ajay Kumar Garg	-	Director
3.	Shri Raju Srivastava	-	Additional Director
4.	Smt Jagriti Tewatia	-	Deputy Secretary
5.	Shri Rajesh Mohan	-	Committee Officer

I N T R O D U C T I O N

I, the Chairperson, Committee on Subordinate Legislation having been authorised by the Committee to submit the report on their behalf, present this Fifth Report.

2. The matters covered by this Report were considered by the Committee on Subordinate Legislation at their sittings held on 4.2.2015.

3. The Committee considered and adopted this Report at their sitting held on 5.5.2015.

4. For facility of reference and convenience, observations/recommendations of the Committee have been printed in thick type in the body of the Report and have also been reproduced in Appendix-I of the Report.

5. Extracts from the Minutes of the Fifth sitting of the Committee (2014-15) held on 4.2.2015 and Extracts from the Minutes of Ninth Sitting of the Committee (2014-15) held on 5.5.2015 relevant to this Report are included in Appendix-II of the Report.

DILIPKUMAR MANSUKHLAL GANDHI
Chairperson,
Committee on Subordinate Legislation

New Delhi;
5 May, 2015
15 Vaisakha, 1937 (Saka)

REPORT

I

The National Savings Certificates (IX Issue) Rules, 2011 (GSR 848-E of 2011).

The National Saving Certificate (IX issue) Rules, 2011 (GSR 848-E of 2011) were published in the Gazette of India, Extraordinary, Part-II, Section 3(i) dated 29.11.2011. On scrutiny of the rules, the following infirmities were observed:

(i) Rule 12(1) mentions terms 'Scheduled Bank', 'Cooperative Society' and 'Cooperative Bank' but these terms have not been defined either in Act or in rules.

(ii) Legislation by reference has been resorted to in the Rules to Post Office Savings Account Rules, 1981 in Rule 16 (3), Indian Succession Act, 1925 in Rule 20 (1), the Airforce Act, 1950, the Navy Act, 1950 and the Army and Airforce (Disposal of Private Property) Act, 1950 in Rule 21 and the Income Tax Act, 1961 in Rule 24 of the aforesaid rules.

1.2. On being referred for comments, the Ministry of Finance (Department of Revenue) furnished the following reply dated 23.01.2013 and 29.10.2013 regarding the above infirmities:

'Scheduled Bank' means a Bank for the time being included in the Schedule to the Reserve Bank of India Act, 1934, (2 of 1934).

'Cooperative society' means a society registered or deemed to be registered under any law relating to cooperative societies for the time being in force in any state: and 'cooperative bank' means a bank registered under the cooperative Societies Act and governed by the Banking Regulation Act, 1949 and Banking Law Act, 1965

Only general reference of other Act has been made in Notification No. GSR 848-E issued in respect of National Savings Certificate (IX issue) and no specific reference has been made. It is not feasible to avoid general reference of other Acts."

1.3. In the aforesaid rules, definition of certain terms were not included and legislation by reference was resorted to. The rule 12 (1) of the National Savings Certificates (IX issue) Rules, 2011 mentions terms 'Scheduled Bank', 'Cooperative Society' and 'Cooperative Bank' but these terms were neither defined in the Act nor in rules. On being pointed out, the Ministry of Finance (Department of Revenue) furnished the definition of the above terms used in the Rules. The inclusion of the terms in the rules, makes the rules self contained. Similarly, legislation by reference was also resorted to by the Ministry - Post Office Savings Account Rules, 1981 in Rule 16 (3), Indian Succession Act, 1925 in Rule 20 (1), the Airforce Act, 1950, the Navy Act, 1950 and the Army and Airforce (Disposal of Private Property) Act, 1950 in Rule 21 and the Income Tax Act, 1961 in Rule 24. On being brought to the notice of the Ministry, they have stated that general reference to Acts referred in the rules could not be avoided. Whereas, the Committee have from time to time recommended that the reference should be avoided in order make the rules self contained.

1.4. The Committee note that despite clear definitions of the terms like 'Scheduled Bank', 'Cooperative Society', and 'Cooperative Bank' the same have not been defined in the Government Savings Act, 1959 and also in the National Savings Certificates (IX issue) Rules, 2011 framed under the Act. The Committee , therefore, recommend that important terms should be clearly defined in the parent Act and if , for any reason they are not defined in the Act, they should be defined in the rules in order to make the rules complete and self explanatory.

1.5. The Committee also note that in Rule 20(1) of the National Savings Certificates (IX issue) Rules, 2011, references of Post Office Savings Account Rules, 1981, Indian

Succession Act, 1925, the Airforce Act, 1950, the Navy Act, 1950, the Army and Airforce (Disposal of Private Property) Act, 1950 and the Income Tax Act, 1961 have been made. The Committee, have from time to time emphasised that rules should as far as possible be self contained and legislation by reference should be avoided. The Committee may while agreeing with the Ministry's contention that it is not feasible to avoid general reference to the Acts/Rules, desires that wherever possible the relevant extracts of the Acts/rules referred to in the rules should be appended to the rules in a manner which is akin to appending of the relevant extracts of the Acts in the bills introduced in Parliament, so that no difficulty is caused to public in locating and referencing the rules.

II

The Intellectual Property Appellate Board (Salaries and allowances payable to and other terms and conditions of service of the Chairman, Vice-Chairman and Members) Amendment Rules, 2012 (GSR 438 (E) of 2012).

The Intellectual Property Appellate Board (Salaries and allowances payable to, and other terms and conditions of service of the Chairman, Vice-Chairman and Members) Amendment Rules, 2012 (GSR 438 (E) of 2012) were published in the Gazette of India Extraordinary, Part-II, Section 3 (i) on 11 June, 2012. The Rules intend to revise the pay scales in pursuance to acceptance of recommendations of the 6th Pay Commission and extension thereof to the employees of the Board, with effect from 1st January, 2006.

2.2. On the scrutiny of the aforesaid Rules, it was observed that certain draft rules published under sub-section (1) of section 157 of Trade Marks Act, 1999 vide notification of the Government of India in the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) dated 19 December, 2011 were made available to the public on 24 December, 2011 inviting objections and suggestions from all persons likely to be affected thereby before the expiry of fifteen days from the date on which the copies of the official gazette containing the notification were made available to the public. However, no objections and suggestions were received from the public by the Central Government.

2.3. The Committee have *inter-alia* recommended in their earlier Reports that in cases where no objections/suggestions on the draft rules were forthcoming, the final rules should be published within a period of 3 months and the Ministry should scrupulously observe this guideline with a view to minimize the gap between the publication of draft rules and their final notification. The

aforesaid rules should have been, accordingly, published within a period of 3 months, i.e. by 8 April, 2012 instead of 11 June, 2012. The rules, thus, notified by the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) on 11 June, 2012 were delayed by more than two months. The Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) were requested to furnish the reasons for delay in the notification of Rules in the final form.

2.4. The Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) vide their OM dated 6 May, 2013 submitted that:-

> "The draft Intellectual Property Appellate Board (Salaries and Allowances payable to, and other terms and conditions of Service of the Chairman, Vice Chairman and Members) Amendment Rules, 2012 were sent to the Press on 19.12.2011 and the same was published in the Gazette of India on 24.12.2011 inviting objections / suggestions from all persons likely to be affected thereby before expiry of fifteen days from the date on which the copies of the Official Gazette containing the draft Notification were made public.
>
> The final notification should have been issued within a period of 3 months from the date the draft Gazette Notification was made available to the public, i.e. by 8.4.2012, but could not be published because this Department had no intimation on the publication of the draft Notification. It was only in the last week of March 2012, on enquiry with the Press at Mayapuri, it was noticed that the draft Notification was made public on 24.12.2011 itself and DIPP was not informed about the publication. In this regard, the Department inadvertently did not remind the Press. However, this Department had noticed this shortcoming before the final publication of the Rules and had conveyed to the Lok Sabha Secretariat its deep regret for the inadvertent delay and had requested for extension of time for publication vide OM of even number dated 8.5.2012.
>
> As per the advice given by the Lok Sabha Secretariat vide OM No. 38/6(6)/COSL/2013 dated 6.6.2012, DIPP notified the above Rules on 11.6.2012. The inadvertent delay caused in the publication of final Notification is deeply regretted. The reasons for delay may kindly be accepted."

2.5. It may kindly be seen from the above that the Ministry did not have any intimation of the publication of the draft notification; as a result they could not remind the press to publish the notification in final form. The Ministry sought an extension of time from Lok Sabha Secretariat for publication of final notification only after they enquired about the publication of draft rules in the last week of March, 2012 from the Press. The rules were thereupon published finally by the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) after a delay of more than 2 months.

2.6. The Committee note that the draft of Intellectual Property Appellate Board (Salaries and allowances payable to, and other terms and conditions of service of the Chairman, Vice-Chairman and Members) Amendment Rules, 2012 (GSR 438 (E) of 2012) made available to the public on 24 December, 2011, seeking objection/suggestion within fifteen days was published in final form on 11 June, 2012 by the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) after a delay of more than 2 months. The explanation from the Ministry that the delay in the publication of final notification was caused because they were not aware about the publication of the draft Notification so they could not remind the Press to publish the notification in final form does not appear convincing. The Ministry is expected to exercise due care and caution and be vigilant after the rules were sent to the press to avoid delay in publication by the press. It appears to the Committee that there is no structured monitoring mechanism in the Ministry to follow-up such matters. The Committee, therefore, feel that the Ministry cannot absolve themselves from their responsibility of getting timely publication of draft Rules in final form. The Committee express their deep anguish over such casual, irresponsible and lackadaisical attitude of the Ministry in perpetuating this lapse and strongly urge the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) to keep themselves abreast of the procedures of handling of notifications and streamline the same so that such lapses do not recur in future.

III

The Adjudicating Authority (Procedure) Regulations, 2013 (GSR 177-E of 2013).

.....

The Ministry of Finance (Department of Revenue) published the Adjudicating Authority (Procedure) Regulations, 2013 (GSR 177-E of 2013) in the Gazette of India, Extraordinary, Part-II, Section 3(i) dated 18.3.2013. On scrutiny of the regulations, following infirmities were observed and the same were sent to the Ministry for their comments:

(i) Legislation by reference had been resorted to by referring to Civil Procedure Code 1908 and Information Technology Act, 2000 in Rule 13. The Committee have time and again reiterated that the rules/regulations should be self contained and should avoid legislation by reference.

(ii) In rule 15(2), the use of word 'ordinarily' makes the particular clause unspecific. Further, the same word used in rule 28(3) is vague and carried the risk of being interpreted differently.

3.2. The Ministry of Finance (Department of Revenue) *vide* their OM dated 21 November, 2013 furnished the following reply:

"(i) In Rule 13, references have been made to the provisions of Order V of the Schedule (I) of Civil Procedure Code 1908 (5 of 1908) and Information Technology Act, 2000. These provisions have been referred in Rule 13 to make it more comprehensive. It is conveyed that similar practice is in vogue in various statutes. For example, under section 131 of the Income Tax Act the following provisions have been incorporated.

> The Assessing Officers, shall for the purpose of this Act have the same powers as are vested in a court under the code of Civil Procedure, 1908 (5 of 1908) when trying a suit in respect of the following matters, namely:-
> (a) Discovery and inspection
> (b) Enforcing the attendance of any person, including any officer of a banking company and examining him on oath.;
> (c) Compelling the production of books of account and other documents; and
> (d) Issuing commissions.

(ii) The Adjudicating Authority, PMLA agrees with the view conveyed by the Hon'ble Committee and recommends that the word "Ordinarily" may be deleted from Rule 15(2) and Rule 28 (3) of the Adjudicating Authority (Procedure) Regulations, 2013. The revised Rule 15 (2) and Rule 28 (3) will accordingly read as under:

Regulation 15 (2) – " No reply shall be entertained after the date stipulated above" or in the alternative Rule 15 (2) may be deleted and Rule 15 (3) may be renumbered as Rule 15 (2).

Regulation 28 (3) – "After completion of the examination of record, the list of the records shall be kept in a file and at the end of the calender year, the list shall be bound up so as to constitute a register of decided cases."

3.3. In regulation 13 of the aforesaid regulations reference to Civil Procedure Code 1908 and Information Technology Act, 2000 has been made. In order to make regulation self contained, such references to any Act/Law should be avoided. It is precisely the reason for which the Committee have recommended time and again that legislation by reference should be restrained from use in the rules/regulations.

3.4. Further, the regulations 15(2) and 28(3) of the aforesaid regulations read as under:

Regulation 15 (2) – "Ordinarily, no reply shall be entertained after the date stipulated above"

Regulation 28 (3) – "After completion of the examination of record, the list of the records shall be kept in a file and ordinarily at the end of the calendar year, the list shall be bound up so as to constitute a register of decided cases."

The use of word 'ordinarily' in Regulation 15 (2) may stipulate that under normal circumstances no reply shall be entertained after stipulated date whereas in other circumstances this condition may be liberalised. Thus, the use of word 'ordinarily' in the regulation 15(2) may lead to subjective application of the regulation i.e. differently for different persons. Similarly, Regulation 28 (3) indicates that at the end of calendar year a list of cases is to be bound so as to constitute a register of decided cases. But the use of word 'ordinarily' in this regulation leaves the scope of

ambiguity which may result into non-constitution of a register of decided cases. Thus, the use of word 'ordinarily' in Regulation 15(2) and Regulation 28(3) is making the particular clause unspecific and vague.

3.5. The Committee observe that in Regulation 13 of the Adjudicating Authority (Procedure) Regulations, 2013 (GSR 177-E of 2013) reference has been made to Civil Procedure Code, 1908 and Information Technology Act, 2000. The Committee note that the Ministry should avoid legislation by reference and as far as possible the regulations should be self contained. The Committee strongly express its disagreement with the reply of the Ministry that the reference has been made to make the regulations comprehensive and similar reference is in vogue in other statutes. The Committee recommend that regulations should be drafted in such a manner that no difficulty is caused to public in locating and referencing the regulations. The Committee desire that wherever possible Ministry should append the extracts of the relevant Act to the regulations.

3.6. The Committee also observe that the use of the word 'ordinarily' in the regulations 15 (2) and 28 (3) of the Adjudicating Authority (Procedure) Regulations, 2013 (GSR 177-E of 2013) makes the particular provision ambiguous and leave the scope of subjective interpretation by different persons. The Committee note with satisfaction that on being pointed out, the Ministry have agreed to amend the regulations to remove the ambiguity by removing the use of the word 'ordinarily' from Regulations 15(2) and 28(3) of the aforesaid Regulations. The Committee recommend that the Ministry may bring out the suitable amendments in the Regulations 15 (2) and 28 (3) of the said Regulations at the earliest to make it unequivocal and specific.

DILIPKUMAR MANSUKHLAL GANDHI
Chairperson,
Committee on Subordinate Legislation

New Delhi:
5 May, 2015
15 Vaisakha, 1937 (Saka)

APPENDIX I

(Vide Para 4 of the Introduction of the Report)

SUMMARY OF RECOMMENDTIONS MADE IN THE FIFTH REPORT OF THE COMMITTEE ON SUBORDINATE LEGISLATION

(SIXTEENTH LOK SABHA)

Sl.No.	Reference to Para No. in the Report	Summary of Recommendations
1	2	3
1.		The National Savings Certificates (IX Issue) Rules, 2011 (GSR 848-E of 2011).
	1.4	The Committee note that despite clear definitions of the terms like 'Scheduled Bank', 'Cooperative Society', and 'Cooperative Bank' the same have not been defined in the Government Savings Act, 1959 and also in the National Savings Certificates (IX issue) Rules, 2011 framed under the Act. The Committee , therefore, recommend that important terms should be clearly defined in the parent Act and if , for any reason they are not defined in the Act, they should be defined in the rules in order to make the rules complete and self explanatory.
	1.5	The Committee also note that in Rule 20(1) of the National Savings Certificates (IX issue) Rules, 2011, references of Post Office Savings Account Rules, 1981, Indian Succession Act, 1925, the Airforce Act, 1950, the Navy Act, 1950, the Army and Airforce (Disposal of Private Property) Act, 1950 and the Income Tax Act, 1961 have been made. The Committee, have from time to time emphasised that rules should as far as possible be self contained and legislation by reference should be avoided. The Committee may while agreeing with the Ministry's contention that it is not feasible to avoid general reference to the Acts/Rules, desires that wherever possible the relevant extracts of the Acts/rules referred to in the rules should be appended to the rules in a manner which is akin to appending of the relevant extracts of the Acts in the bills introduced in Parliament, so that no difficulty is caused to public in locating and referencing the rules.

2.		**The Intellectual Property Appellate Board (Salaries and allowances payable to and other terms and conditions of service of the Chairman, Vice-Chairman and Members) Amendment Rules, 2012 (GSR 438 (E) of 2012).**
	2.6	**The Committee note that the draft of Intellectual Property Appellate Board (Salaries and allowances payable to, and other terms and conditions of service of the Chairman, Vice-Chairman and Members) Amendment Rules, 2012 (GSR 438 (E) of 2012) made available to the public on 24 December, 2011, seeking objection/suggestion within fifteen days was published in final form on 11 June, 2012 by the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) after a delay of more than 2 months. The explanation from the Ministry that the delay in the publication of final notification was caused because they were not aware about the publication of the draft Notification so they could not remind the Press to publish the notification in final form does not appear convincing. The Ministry is expected to exercise due care and caution and be vigilant after the rules were sent to the press to avoid delay in publication by the press. It appears to the Committee that there is no structured monitoring mechanism in the Ministry to follow-up such matters. The Committee, therefore, feel that the Ministry cannot absolve themselves from their responsibility of getting timely publication of draft Rules in final form. The Committee express their deep anguish over such casual, irresponsible and lackadaisical attitude of the Ministry in perpetuating this lapse and strongly urge the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) to keep themselves abreast of the procedures of handling of notifications and streamline the same so that such lapses do not recur in future.**
3		**The Adjudicating Authority (Procedure) Regulations, 2013 (GSR 177-E of 2013).**
	3.5	**The Committee observe that in Regulation 13 of the Adjudicating Authority (Procedure) Regulations, 2013 (GSR 177-E of 2013) reference has been made to Civil Procedure Code, 1908 and Information Technology Act, 2000. The Committee note that the Ministry should avoid legislation by reference and as far as possible the regulations should be self**

		contained. The Committee strongly express its disagreement with the reply of the Ministry that the reference has been made to make the regulations comprehensive and similar reference is in vogue in other statutes. The Committee recommend that regulations should be drafted in such a manner that no difficulty is caused to public in locating and referencing the regulations. The Committee desire that wherever possible Ministry should append the extracts of the relevant Act to the regulations.
	3.6	**The Committee also observe that the use of the word 'ordinarily' in the regulations 15 (2) and 28 (3) of the Adjudicating Authority (Procedure) Regulations, 2013 (GSR 177-E of 2013) makes the particular provision ambiguous and leave the scope of subjective interpretation by different persons. The Committee note with satisfaction that on being pointed out, the Ministry have agreed to amend the regulations to remove the ambiguity by removing the use of the word 'ordinarily' from Regulations 15(2) and 28(3) of the aforesaid Regulations. The Committee recommend that the Ministry may bring out the suitable amendments in the Regulations 15 (2) and 28 (3) of the said Regulations at the earliest to make it unequivocal and specific.**

APPENDIX II

(Vide Para 5 of the Introduction of the Report)

EXTRACTS FROM MINUTES OF THE FIFTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (2014-2015)

___

The fifth sitting of the Committee (2014-15) was held on Wednesday, the 4th February, 2015 from 1500 to 1615 hours in Committee Room 'C', Parliament House Annexe, New Delhi.

PRESENT

1. Shri Dilipkumar Mansukhlal Gandhi — Chairperson

MEMBERS

2. Shri Idris Ali
3. Shri C.R. Chaudhary
4. Shri Prem Das Rai
5. Shri Chandu Lal Sahu
6. Adv. Narendra Keshav Sawaikar
7. Shri Ram Kumar Sharma
8. Shri Nandi Yellaiah

SECRETARIAT

1.	Shri R.S. Kambo	-	Joint Secretary
2.	Shri Ajay Kumar Garg	-	Director
3.	Shri Raju Srivastava	-	Additional Director

2. At the outset, the Chairperson welcomed the members to the sitting of the Committee (2014-15). The Committee, thereafter, considered the following Memoranda:-

(i) **Memorandum No. 5 –** The National Savings Certificates (IX issue) Rules, 2011 (GSR 848-E).

(ii) **Memorandum No. 6 –** The Intellectual Property Appellate Board (Salaries and allowances payable to, and other terms and conditions of service of the Chairman, Vice-Chairman and Members) Amendment Rules, 2012 (GSR 438-E).

(iii) **Memorandum No. 7 –** The Adjudicating Authority (Procedure) Regulations, 2013 (GSR 177-E).

3. After deliberations, the Committee decided to incorporate the points raised in the Memoranda Nos. 5 to 7 in their Report to be formulated in this regard.

4. XX XX XX

5. XX XX XX

6. XX XX XX

7. XX XX XX

8. XX XX XX

The Committee then adjourned.

**Omitted portion of the Minutes are not relevant to this Report

EXTRACTS FROM MINUTES OF THE NINTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (2014-2015)

___

The ninth sitting of the Committee (2014-15) was held on Tuesday, the 5th May, 2015 from 1600 to 1700 hours in Chairperson's Chamber, Room No. 146, Parliament House, New Delhi.

PRESENT

1. Shri Dilipkumar Mansukhlal Gandhi — Chairperson

MEMBERS

2. Shri Idris Ali
3. Shri P.P. Chaudhary
4. Shri Shyama Charan Gupta
5. Shri Jhina Hikaka
6. Shri Chandulal Sahu
7. Adv. Narendra Keshav Sawaikar
8. Shri Nandi Yellaiah
9. Shri Birendra Kumar Chaudhary

SECRETARIAT

1.	Shri Shiv Singh	-	Joint Secretary
2.	Shri Ajay Kumar Garg	-	Director
3.	Shri Raju Srivastava	-	Additional Director
4.	Smt. Jagriti Tewatia	-	Deputy Secretary

2. The Committee considered and adopted the draft 'Fifth Report' of the Committee without any modification. The Committee also authorised the Chairperson to present the report to the House.

3. XX XX XX XX

4. **XX** **XX** **XX** **XX**

5. XX XX XX XX

The Committee then adjourned.

**Omitted portion of the Minutes are not relevant to this Report